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by

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/436,171 11/09/99 BLECKMANN

A BEIERSDORF59

EXAMINER

HM12/0525

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WELLS, L	
ART UNIT	PAPER NUMBER

1619

DATE MAILED:

05/25/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/436,171

Applicant(s)

BLECKMANN ET AL.

Examiner

Lauren Q Wells

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 18) ☒ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schreiber et al. (WO 98/17232) in view of Lang et al. (4,976,952) in further view of Seidel et al. (5,830,483).

Schreiber et al. teach water-in-oil emulsions comprising 30-85% of an aqueous phase, and preferably 1-20% of a lipid phase, and a surface active substance of formula (I) of the instant invention. PEG-30 dipolyhydroxystearate is disclosed a surface-active substance. Oils disclosed include branched and unbranched hydrocarbons. The reference fails to teach cationic polymers and preferred oils. See pg. 4-15; pg. 17; pg. 19-40.

Lange et al. teach cosmetic compositions comprising 0.05-10% of cationic chitosans. Water-in-oil emulsions as disclosed as a preferred form of the composition. See Col. 2, line 9-Col. 8, line 56.

Seidel et al. teach oil-in-water emulsions comprising 50-99% water, 1-30% oil phase, a nonionic emulsifier, and an ionic emulsifier. Cationic polymers are disclosed as nonionic emulsifiers. Paraffin oils are disclosed as part of the oil phase. See Col. 1, line 30-Col. 5, line 5.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the emulsion of Schreiber et al. using the teachings of Lange et al. and obtain a water-in-oil emulsion comprising a cationic chitosan because a) Schreiber et al. and Lange et al. both teach water-in-oil emulsions for cosmetic use; b) Schreiber et al. teach water-soluble polymers as part of the emulsion; c) Schreiber et al. teach emulsifiers as cosmetic additives and Lange et al. teach cationic chitosans as emulsifiers. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the paraffin oil of Seidel et al. for the oil of the combined references because a) the combined references and Seidel et al. all teach emulsions for cosmetic use; b) Schreiber et al. teach branched and unbranched hydrocarbon oils as making up part of the oil phase.

The claimed subject matter fails to patentably distinguish over the state of the art as represented by the cited references. Therefore, the claims are properly rejected under 35 U.S.C. § 103.

Prior Art

The prior art made of record and not specifically relied upon in any rejections cited above is either 1) considered cumulative to the prior art that was cited in a rejection or is 2) considered pertinent to the applicant's disclosure and shows the state of the art in its field but is not determined by the Examiner to read upon the invention currently being prosecuted in this application.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
May 17, 2001


DAMERON L. JONES
PRIMARY EXAMINER